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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
MEDFORD DIVISION

**STEPHEN MARCHIONE
D/B/A MARCHIONE
GUITARS, LLC,**
Plaintiff,

Case No.
COMPLAINT

v.

**STEVE CLAYTON, INC., PLAYBOY ENTERPRISES INC.
DEFENDANTS,**

DEMAND FOR A JURY TRIAL

Defendant.

NATURE OF ACTION

1.

Plaintiff brings this action for breach of contract, money damages, specific performance, unjust enrichment and *quantum meruit* along with costs and attorney fees.

JURISDICTIONAL ALLEGATIONS

2.

The court has jurisdiction over Plaintiff's claims pursuant to 28 U.S.C. § 1332 because:

- a. The Plaintiff is an individual and sole proprietorship residing in the State of Texas;
- b. Defendant Steve Clayton, Inc. is a corporation organized and existing under the laws of the State of Oregon, with its principal place of business in Talent, Oregon.
- c. Defendant Playboy Enterprises, Inc. is a corporation organized and existing under the laws of the State of Delaware with its principal place of business in Chicago, Illinois;
- d. There is complete diversity of citizenship between the Plaintiff and Defendants; and
- e. The amount in controversy exceeds the sum of \$75,000.00, exclusive of interests and costs.

GENERAL FACTUAL ALLEGATIONS

3.

Plaintiff is a sole proprietorship whose principal place of business is at 1312 Willard St., Houston, Texas. Plaintiff is in the business of designing, crafting and marketing custom guitars and stringed musical instruments.

4.

Defendant Steve Clayton, Inc. ("Clayton") is an Oregon Corporation whose principal place of business is at 605 Weller Lane, Ashland, Oregon 97520. Defendant manufactures guitars.

5.

Defendant Playboy Enterprises, Inc. ("Playboy") is a well-known publishing and marketing concern whose principle place of business is located at 680 N. Lake Shore Dr., Chicago, Illinois.

6.

Clayton retained Plaintiff to design three custom guitars using Playboy's distinctive rabbit trademark. Clayton was a licensee of Playboy and thus authorized to market the trademarks. Plaintiff was to create unique guitar designs that were distinguishable from other guitars on the market. Using Plaintiff's designs, Clayton was to manufacture the guitars from its facility in Oregon.

7.

On June 26, 2006, Plaintiff and Clayton entered into a written contract under which Plaintiff agreed to design an electric and acoustic guitar using the Playboy trademarks. Under the contract, Plaintiff would receive 3% of Net Sales of the guitars. Clayton was also to provide a report to Plaintiff March 15 and September 15 of every

year providing an accounting of net sales and payment for Plaintiff's percentage. The contract commenced on June 26, 2006 and continues until expressly terminated. A true and correct copy of the contract is attached to this complaint and incorporated by reference in it as Exhibit "A."

8.

Plaintiff duly performed all the terms and conditions of the contract, timely providing Clayton with unique instrument designs. Clayton manufactured and sold and continues to manufacture and sell Plaintiff's guitar designs. Upon information and belief, Playboy received a royalty for these sales.

9.

Defendant Clayton breached the contract by failing and refused to pay Plaintiff his 3% royalty or the biannual reports of net sales. Upon information and belief, Clayton continues to manufacture and sell guitars designed by Plaintiff and pay Playboy its royalties. Plaintiff has demanded Defendant to fulfill its obligations under the contract but the defendant has failed and refused and continues to fail and refuse to do so. Plaintiff has been damaged in an amount of \$850,000.

CLAIMS FOR RELIEF

Breach of Contract

10.

Plaintiff re-alleges paragraphs 1 through 9.

11.

Defendant Clayton breached its contract with Plaintiff by failing to pay royalties and provide biannual reports regarding net sales. Plaintiff is entitled to 3% of net sales of the guitars he designed under the contract with Clayton.

Unjust Enrichment

12.

Plaintiff re-alleges paragraphs 1 through 9.

13.

Defendants Clayton and Playboy have been unjustly enriched by Clayton's breach of contract. Clayton received profits from sales of Plaintiff's guitar designs and Playboy received royalty payments from such sales without compensating Plaintiff. As a result, Defendants have been unjustly enriched. Plaintiff seeks recovery of the profits received by Defendants for Plaintiff's work.

Specific Performance

14.

Plaintiff re-alleges paragraphs 1 through 9.

15.

Plaintiff seeks a judgment requiring Defendant Clayton to comply with the terms of the contract by paying Plaintiff the royalties to which he is entitled under that contract for all future sales of the musical instruments.

Quantum Meruit

16.

Plaintiff re-alleges paragraphs 1 through 9.

17.

In the alternative, Plaintiff seeks reasonable compensation for his intellectual property and services based upon *quantum meruit*.

DECLARATORY JUDGMENT SOUGHT

18.

Plaintiff re-alleges paragraphs 1 through 9.

19.

In order to resolve this controversy, Plaintiff respectfully requests that, pursuant to 28 U.S.C. § 2201, this court declare the respective rights and duties of the parties in this matter and, in particular, that the Court declare that Plaintiff is entitled to 3% of all Net Sales of the guitars under the Contract.

20.

A valid case or controversy exists sufficient for this court to declare the rights and remedies of the parties in that Defendants have failed and refused to comply with the terms of the Contract. They have profited from the Contract without paying Plaintiff as required by the Contract.

21.

This controversy is ripe for determination at this time because Plaintiff is owed money under the Contract that Defendants have failed and refused to pay.

Prayer for Relief

WHEREFORE, Plaintiff prays for judgment:

1. Against the Defendants in a sum of eight hundred fifty thousand dollars and no cents (\$850,000.00);
2. Prejudgment and post-judgment interest;

3. Against Defendant Clayton for specific performance under the terms of the contract requiring Clayton to pay all future royalties thereunder;
4. For Judgment declaring that Plaintiff is entitled to 3% of all future Net Sales under the Contract;
5. Reasonable costs and attorney fees; and
6. For such other and further relief as the Court may deem just and equitable.

DATED this 24 day of August, 2012.

/s/ Kenneth C. Baker
TSB No. 01584480
Attorneys for Plaintiff